

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

JOHN R. HENDERSON,)	
)	
Plaintiff,)	
)	
)	CIV-13-1331-L
v.)	
)	
CAROLYN W. COLVIN,)	
Acting Commissioner of Social)	
Security Administration,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

On December 18, 2013, Plaintiff, who appears with counsel, filed this action seeking judicial review pursuant to 42 U.S.C. § 405(g) of the final decision of Defendant Commissioner denying his applications for disability benefits. The matter was referred by District Judge Leonard to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). With his Complaint, Plaintiff filed an Application to Proceed Without Prepayment of Fees and Affidavit. Application (Doc. # 2). On December 19, 2013, the undersigned reviewed the Complaint and Application and determined that the Application was deficient because it was missing financial information. By Order entered that same date, Plaintiff was directed to cure the deficiency in the Application on or before January 6, 2014. Order (Doc. # 3). Plaintiff was advised in the Order that if he failed to comply with the Order the undersigned would recommend dismissal of the action without prejudice and

without further notice.

To this date, Plaintiff has taken no action to cure the deficiency or sought an extension of time to do so. Plaintiff's lack of interest in complying with the Court's Order combined with the Court's continuing effort to manage and control its caseload warrant a dismissal of the action without prejudice. See Gripe v. City of Enid, Okla., 312 F.3d 1184, 1188 (10th Cir. 2002)(Federal Rules of Civil Procedure authorize sanctions, including dismissal, for failure to comply with court's orders). See also Nasious v. Two Unknown B.I.C.E. Agents at Arapahoe County Justice Center, 492 F.3d 1158, 1161 n. 2, 1162 (10th Cir. 2007)(*sua sponte* dismissal for failure to comply with court's orders permitted under federal rules, and court need not follow any particular procedures in dismissing action without prejudice for failure to comply).

RECOMMENDATION

In view of the foregoing findings, it is recommended that judgment enter DISMISSING the action without prejudice due to noncompliance with the Court's Order. Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court on or before February 17th, 2014, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. The failure to timely object to this Report and Recommendation would waive appellate review of the recommended ruling. Moore v. United States, 950 F.2d 656 (10th Cir. 1991); cf. Marshall v. Chater, 75 F.3d 1421, 1426 (10th Cir. 1996)(“Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived.”).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter, and any pending motion not specifically addressed herein is denied.

ENTERED this 27th day of January, 2014.



GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE